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PAAB

PROPERTY ASSESSMENT APPEAL BOARD

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket Nos. 2019-099-00181R & 2019-099-00186R

Parcel Nos. 03-29-400-013 & 03-29-400-016

Mark Thompson,

Appellant,

vs.

Wright County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 29, 2019. Mark Thompson was self-represented. Wright County Attorney Eric Simonson represented the Board of Review.

Mark and Jacquelyn Thompson along with Brandon and Nora Thompson (the Appellants) jointly own two vacant parcels located in Belmond. The following table summarizes the January 1, 2019 assessments. (Dockets 00181R & 00186R, Ex. A).

Docket Number	Parcel Number	Assessed Land Value	Classification
2019-099-00181R	03-29-400-013	$10,200	Residential
2019-099-00186R	03-29-400-016	$300	Residential

The Appellants petitioned the Board of Review claiming their properties were misclassified. Iowa Code § 441.37(1)(a)(3) (2019). The Board of Review denied the petitions.

The Appellants reasserted their claim to PAAB. They believe the properties should be classified agricultural.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R. 701-126.2(2-4). New or additional evidence may be introduced. *Id*. PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty*., 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

The subject properties are two adjoining vacant parcels, hereinafter referred to as Parcel A and Parcel G. (Ex. D).

Parcel A is a 5.11-acre site. (Docket 00181R, Ex. A). It is an irregular, somewhat flag-shaped lot with driveway access to 150th Street. The driveway also provides access to adjoining, Parcels D and H that are improved with residences. (Ex. D). A portion of Parcel A is open pasture or grassland area, and the remaining portion of the site has tree cover. (Exs. D, 7-8). Wright County Assessor Shari Plagge testified for the Board of Review and reported the driveway on Parcel A is roughly 1.5 acres of Parcel A's total site size.

Parcel G is a 0.16-acre site. (Docket 00186R, Ex. A). It is a narrow strip of land adjoining Parcel A and abutting a lake; it is completely tree covered. (Ex. D).

In total, Parcel A and G have roughly 3 acres of tree coverage. (Ex. 11).

Jacquelyn Thompson testified for the Appellants and provided a background of ownership for the subject properties. (Ex. 1). The Appellants include Mark and

Jacquelyn Thompson, as well as their son-in-law and daughter Brandon and Nora Thompson.

Brandon is a farmer in Wright County, which is uncontested. Mark Thompson testified Brandon custom farms on over 1000 acres in Wright County that he owns or rents. Mark also explained that although he has other outside employment, in the Spring and Fall he assists Brandon and another farmer with their agricultural activities within Wright County.

In 2008, Brandon purchased roughly six-acres of agriculturally classified land that included a large egg hatchery. (Ex. 3). After the 2008 purchase, Brandon began removing the egg hatchery and other improvements; and brought in approximately 150 semi-truck loads of dirt to fill the site prior to being professionally seeded. (Ex. 1). Mark testified the removal of the hatchery began around 2014 and it was completely removed by 2016.

In 2014, Mark and Jacquelyn purchased roughly a one-acre portion of Brandon's site, hereinafter identified as Parcel H, with the remaining site being the previously identified Parcel A. (Ex. D). Ownership of Parcel A and Parcel G were transferred to the Appellants in 2018. (Dockets 00181R & 00186R, Exs. A; & Ex.1).

At the time of the 2008 purchase, Brandon believed the site he was buying had lake-frontage. Jacquelyn testified that when she and Mark decided to purchase their home site (Parcel H), it was a surprise to the Appellants to discover the original six-acre site Brandon purchased in 2008 did not have lakefront. Through lengthy negotiations with the adjoining landowner the Appellants obtained Parcel G.

After the Appellants took ownership of Parcels A and G in 2018, the Wright County Assessor's Office changed the January 1, 2019 classification of both parcels from agricultural to residential. (Ex. 2).

Brandon reported the subject properties are not tillable. (Ex. 1). Jacquelyn confirmed it is not tillable, but later testified that it is only the treed portion of the sites that are not tillable. But in lieu of tilling, the Appellants decided to put a one-acre portion of the site in prairie grass. Subsequent to the January 1, 2019 assessment the Appellants contacted the Department of Natural Resources (DNR) and signed a ten-

year contract to grow short prairie grass. (Ex. 9). Plagge noted this agreement included the DNR paying for 100% of the estimated cost of the seed. (Ex. 9, p. 1). Jacqueline testified that despite what the document says, the DNR did not pay for 100% of the seed cost.

The Appellants plan to use the remaining wooded portion of the site for tree farming under the Resource Enhancement and Protection (REAP) program. (Exs. 11-12). Plagge noted the REAP plan is unsigned and not dated; and REAP is a management plan for conservation purposes to enhance Iowa's natural resources. Jacquelyn testified that while there is a plan in place for the forestry portion of their long-term strategy for the properties, it is her understanding they cannot sign it unless their properties are classified agricultural. (Exs. 1, 12). The Appellants submitted a May 2019 email from a private lands wildlife specialist with the USDA Natural Resources Conservation Service, with the subject line: REAP Funding. (Ex. 19). This email states: "I spoke with someone who works with the REAP program regularly. In order for you to qualify for cost-share of trees, you have to have land that is designated for agriculture." (Ex. 19).

The Appellants also submitted an email and map from the Wright County Farm Services Agency (FSA) stating the subject properties are "in a farm number." (Ex. 21). Jacquelyn testified this email demonstrates the FSA recognizes the subject as a farm but at this time it cannot legally split it into a separate tract. Plagge testified the map attached to the Appellants' exhibit does not appear to reflect the subject properties, but rather a non-contiguous neighboring site. (Ex. 21).

The Appellants submitted six comparable properties they believe are similar to their properties but are agriculturally classified. (Exs. 13-18). Jacquelyn testified she believes these comparables are approximately the same size as the subject properties, have no contiguous land, and are all treed. Plagge explained that with the exception of Exhibit 18, all of these properties have a forest reserve exemption and for this reason are not reviewed regularly. She further testified she is unsure if the classification for these properties is correct, but it is not something that is reviewed when properties have

an exempt status. Plagge believes the subject properties would qualify for an exempt status such as forest reserve, or a slough bill exemption.

Jacquelyn reported she was aware that several of the property owners of the identified comparable properties were farmers, like her son-in-law and believes this further supports that the subject properties are incorrectly classified as residential. The Board of Review asked Jacquelyn if there has been any agricultural profit from the subject properties since Brandon acquired them in 2008, Jacquelyn testified there has not been any profit related to agricultural use to date but explained they are interviewing potential harvesters for multiple maple and walnut trees. Jacquelyn explained the Appellants have an intent to harvest and replant the trees as part of their forestry plan. Mark also testified to this intent and noted walnut trees have the greatest value and their intent is to replant walnut trees but recognize they will not see an income from those planting for many years.

Mark explained they are trying to find a harvester that will take less than 20 walnut trees. Jacquelyn also testified regarding the number of walnut trees they are hoping to harvest and explained the 20 trees Mark referenced included trees not located on the subject properties. She stated there are five to six mature walnuts on the subject site that may be able to be harvested and the value of each tree is $2500 to $3000. Jacqueline testified they also have maple trees that may be eligible to be harvested.

Plagge confirmed the subject properties have both a treed area and an open pasture area. She also confirmed the egg hatchery and other buildings were removed from the subject properties; and the initial site purchased by Brandon had been subsequently subdivided as described by the Thompsons. She stated the subject parcels have no evidence of agricultural use and adjoin Mark and Jacqueline's residence (Parcel H). She testified Parcel A's driveway encompasses roughly 1.5-acres of the 5.1-acre site and is the only access point to Parcels D and H.

Based on the lack of agricultural use for several years and because Mark and Jacqueline own the adjoining improved Parcel H, Plagge classified Parcels A and G as residential and valued them at an excess land rate, which results in a lower assessment than if the subject parcels were valued as independent residential parcels.

Analysis & Conclusions of Law

The Appellants assert the subject properties are misclassified as residential and should instead be classified agricultural. They bear the burden of proving their assessment is incorrect. § 441.21(3). See also *Miller v. Property Assessment Appeal Bd*., 2019 WL 3714977 at *2 (Iowa Ct. App. Aug. 7, 2019)

Iowa assessors are to classify and value property following the provisions of the Iowa Code and administrative rules adopted by the Iowa Department of Revenue (IDR) and must also rely on other directives or manuals IDR issues. Iowa Code §§ 441.17(4), 441.21(1)(h). IDR has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. The assessor shall classify property according to its present use. *Id*. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id*. Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id*. There can be only one classification per property, except as provided for in paragraph 71.1(5) "b". *Id*. The determination of a property's classification "is to be decided on the basis of its primary use." *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). The assessment is determined as of January 1 of the year of the assessment. §§ 428.4, 441.46; Iowa Admin. Code R. 701-71.2.

Residential property "shall include all land and buildings which are primarily used or intended for human habitation." R. 701-71.1(4). This includes the dwelling as well as structures used in conjunction with the dwelling, such as garages and sheds. *Id*.

Agricultural property includes land and improvements used in good faith primarily for agricultural purposes. R. 701-71.1(3). Land and nonresidential improvements

> shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest and fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in the subrule.

Id.

Although the Appellants engage in agricultural activities on other land they own or rent, it does not appear the subject parcels are held or operated in conjunction with other agricultural real estate. Therefore, the only question is whether Parcels A and G are primarily used in good faith for agricultural purposes with an intent to profit.

The Thompsons testified they have an intention to grow short-prairie grass. To assist in this venture, they signed onto a ten-year cost-share program with the DNR in May 2019. (Ex. 9, 10). They also plan to plant additional trees on the property, which they desire to harvest in the future. The property currently contains approximately five walnut trees and an unstated number of maple trees ready to be harvested. They also seek to participate in the REAP program to cost-share tree plantings. (Ex. 19). The Thompsons believe their property must be classified agricultural to qualify for the REAP program.[1]

As it pertains to the prairie grass, there appears be no intention to derive revenue from this venture. The sole revenue generating activity the Thompsons discussed was the potential sale of trees currently existing or to be grown on these parcels. To that point, Jacquelyn testified they were in discussions to harvest several trees and were attempting to coordinate harvesting with other nearby property owners. She testified a mature maple tree could be sold for between $2500 and $3000. However, no trees were harvested prior to January 1, 2019, and none have been harvested since.

We are not persuaded the subject property's primary use is for agricultural purposes with an intent to profit as of January 1, 2019. The only potentially profitable

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[1] REAP is a multi-faceted state program that provides funding for eight different initiatives. IOWA DEP'T. OF NATURAL RESOURCES, *Resource Enhancement and Protection*, https://www.iowadnr.gov/Conservation/REAP. It is unclear what specific funding vehicle the Thompsons were attempting to access, but it seems likely funding would have come from the Water Protection Fund. Consistent with the administrative rules of that Fund and statements made in Exhibit 19, the minimum eligible area for tree planting is three acres and a forest management plan is required. Iowa Admin. Code R. 27-12.81(2), 27-12.82(4). Under the cost-share funding requirements, however, "Privately owned land not used for agricultural production shall not qualify for water protection practices funds" unless other exceptions apply. Iowa Admin. Code R. 27-12.63(3). Agricultural production is defined as the "commercial production of food or fiber." R. 27-12.20.

We are not convinced the Thompsons' ability to access REAP funding is dependent on the property's assessment classification. Assuming the foregoing is the program from which the Thompsons seek funding, it would be up to the soil and water conservation district to determine eligibility. R. 27-12.61. We suggest they contact the Iowa Department of Agriculture and Land Stewardship's Division of Soil Conservation for more information about the program.

agricultural use occurring on the subject parcels is the growth and harvesting of trees. We find the Thompsons' testimony regarding their future harvest plans to be too indeterminate to demonstrate it is the subject's present and primary use.

As mentioned at the PAAB hearing, the Appellants may want to consider applying for property exemptions under Iowa Code section 427.1 and Chapter 427C (Forest and Fruit-Tree Reservations). According to Plagge's testimony, owners of several of the comparables the Thompsons' submitted have applied for exemptions and she indicated there are exemptions that may be applicable to their property. The Appellants should contact the Assessor's Office prior to February 1 if they have questions about these exemptions or wish to apply.

Viewing the record as a whole, we find the Appellants failed to submit sufficient evidence that the present use of his property as of January 1, 2019, was agricultural with an intent to profit and thus they failed to establish that the subject property was misclassified.

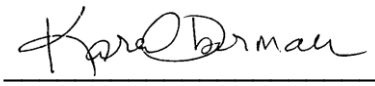
Order

PAAB HEREBY AFFIRMS the Wright County Board of Review's action.

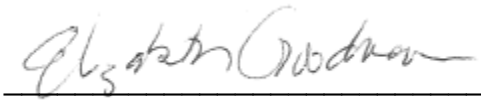
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

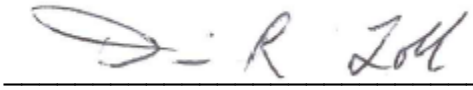
Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.19 (2019).



Karen Oberman, Board Member



Elizabeth Goodman, Board Member



Dennis Loll, Board Member

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